

COMMISSIONER  
OF INCOME-TAX,  
MADRAS

v.

MATHIAS.

SIR GEORGE  
RANKIN.

Their Lordships will humbly advise His Majesty that this appeal should be allowed and that the question referred to the High Court should be answered as above-mentioned.

As the contention upon which the appeal has succeeded was not formally raised in the letter of reference, though it was mooted in argument before the High Court and dealt with by the judgment, there will be no order as to the costs of this appeal, but the High Court's order as to costs will be set aside and each party will bear its own costs in the High Court.

Solicitor for appellant : *The Solicitor, India Office.*

Solicitors for respondent : *Lambert and White.*

C.S.S.

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## APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and Mr. Justice  
Krishnaswami Ayyangar.*

1938,  
November 22.

GOPU CHINA JOGAYYA, GOPU SESHAVATHARAM  
AND COMPANY (FIRST RESPONDENT), PETITIONER,

v.

MANEPALLI BAPANAYYA AND TWO OTHERS  
(APPELLANTS), RESPONDENTS.\*

*Provincial Insolvency Act (V of 1920), ss. 56 and 57—Special  
Receiver—Appointment of—Power of Insolvency Court.*

During the pendency of an appeal in the High Court, the first appellant was adjudicated an insolvent in the District Court and the Official Receiver of that Court was authorized under an order to continue the appeal in the place of the first appellant. The insolvent was not able to furnish the necessary

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\* Civil Miscellaneous Petitions Nos. 2992, 450 and 3619 of 1938.

security, but one V was prepared to furnish it himself if he were appointed a Special Receiver for the purpose of conducting the appeal. On this being brought to the notice of the District Judge in a formal application later in the day, he cancelled his previous order and appointed V as Receiver for the purpose of the appeal. The first respondent in the appeal filed a petition asking the Court to declare that the appeal had abated so far as the first appellant was concerned, the contention being that the District Court had no power to appoint any one but the Official Receiver to take the place of the insolvent.

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*Held* that the District Court had power to appoint an additional Receiver, that as it had passed an order appointing a Special Receiver to represent the estate in the appeal, the appeal had not abated, and that as V had applied to be added as an appellant in the appeal, he should be brought on the record in the place of the insolvent.

Section 56 of the Provincial Insolvency Act does not operate to prohibit the Court appointing an additional Receiver for a special purpose. Section 57 of the Act contemplates the appointment of some one other than the Official Receiver in special circumstances and the Court has power to appoint an additional Receiver when the case demands it. All that the law requires is that the estate shall be represented by a Receiver appointed in the insolvency proceedings.

PETITIONS praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased (i) to post Appeal No. 331 of 1936 preferred to the High Court against the decree of the Court of the Subordinate Judge of Bezwada in Original Suit No. 79 of 1932 for dismissal under Order XXII, rule 8, Civil Procedure Code, declaring that it had abated, so far as the first appellant (first respondent herein) is concerned, (ii) to direct the respondents herein to furnish security in a sum of Rs. 2,235 towards the costs of the suit in the lower Court, and costs of Appeal No. 331 of 1936 preferred to the High Court against the decree of the Court of the Subordinate Judge of Bezwada in Original Suit No. 79 of 1932 and (iii) to

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cause the petitioner herein to be added as supplemental appellant in Appeal No. 331 of 1936 preferred to the High Court against the decree of the Court of the Subordinate Judge of Bezwada in Original Suit No. 79 of 1932 and permit him to prosecute the appeal.

*N. Vasudeva Rao* and *K. Rajah Ayyar* for petitioners.

*K. V. Gopalaswami* and *V. Parthasarathi* for respondents.

LEACH C.J.—The ORDER of the Court was pronounced by LEACH C.J.—After this appeal had been instituted, the first appellant was adjudicated an insolvent in the District Court of Kistna at Masulipatam and Mr. V. Rama Rao, the Official Receiver of that Court, was authorized under an order, dated 25th August 1938, to continue the appeal in the place of the first appellant. The insolvent was not able to furnish the necessary security, but his brother-in-law, Mr. Venkata Krishniah, was prepared to furnish it himself if he were appointed a Special Receiver for the purpose of conducting the appeal. This was brought to the notice of the learned District Judge in a formal application later in the day, whereupon the learned District Judge cancelled his previous order and appointed Mr. Venkata Krishniah as Receiver for the purpose of the appeal. The first respondent in the appeal has filed a petition (No. 2992 of 1938) asking the Court to declare that the appeal has abated so far as the first appellant is concerned, the contention being that the District Court had no power to appoint any one but the Official Receiver to take the place of the insolvent.

Section 56 of the Provincial Insolvency Act states that the Court may, at the time of the order of adjudication, or at any time afterwards, appoint a

Receiver for the property of the insolvent, and such property shall thereupon vest in the Receiver. It is conceded that under this section the Court, if it wished, could appoint two or more persons as Receivers, but it is said that, when a Receiver or Receivers have been appointed under the section, only he or they can act on behalf of the insolvent. In our opinion, the section does not operate to prohibit the Court appointing an additional Receiver for a special purpose. Section 57 of the Act confers upon the Local Government the power to appoint Official Receivers to act within such local limits as it may prescribe and states that, where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under the Act, he shall be the Receiver for the purpose of every order appointing a Receiver or an interim Receiver issued by any such Court, unless the Court for special reasons otherwise directs. Therefore the Act clearly contemplates the appointment of some one other than the Official Receiver in special circumstances and we consider that the Court has power to appoint an additional Receiver when the case demands it. The Court has passed an order appointing a Special Receiver to represent the estate in the present appeal. All that the law requires is that the estate shall be represented by a Receiver appointed in the insolvency proceedings and the appointment has been made. In these circumstances, we refuse the application filed by the first respondent for an order declaring the abatement of the appeal. The appeal has not abated and as there is before us a petition by Mr. Venkata Krishniah, the Special Receiver, asking that he be added as an appellant, we direct that his name be

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brought on the record in the place of the name of the insolvent.

There is also before us an application by the first respondent for an order directing the new appellant to furnish security for costs. This application is unopposed. The first respondent asks that security be ordered in the sum of Rs. 2,235 of which Rs. 1,735 represents the costs awarded to him in the trial Court and the balance of Rs. 500 the estimated costs of the appeal. By an order of the trial Court the costs awarded to the first respondent were made a charge on certain properties of the insolvent. The first respondent asks for a further order in respect of the trial Court costs as he states that a petition for the revision of that order has been filed in this Court. We are informed by the learned Advocate for the insolvent that that application has been returned to him by the Court and that it is not intended to re-file it. In these circumstances, we consider that the proper order to make now is that the Special Receiver shall deposit in this Court a sum of Rs. 500 as security for the costs in the appeal of the first respondent. Ten days time will be allowed for the payment of the money.

The Special Receiver is entitled to his costs in the application by the first respondent for an order declaring that the appeal has abated and the first respondent will get his costs as against the Special Receiver in the application for an order directing him to furnish security for costs. There will be no order as to costs on the formal application made by the Special Receiver for an order directing that his name be brought on the record.

A.S.V.

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